

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

04 MBD 10310

UNITED STATES OF AMERICA

Plaintiff

v.

PROSPERO VENTURES, L.P.,

Defendant.

Case No. C 04 - 4351

**ORDER GRANTING  
RECEIVERSHIP AND  
PERMANENT INJUNCTIVE  
RELIEF**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pursuant to the provisions of 15 U.S.C. §687c, this Court takes exclusive jurisdiction of Prospero Ventures, L.P. ("Prospero") and all of its assets and property, of whatever kind and wherever located, and the United States Small Business Administration ("SBA") is hereby appointed Receiver of Prospero ("Receiver") to serve without bond until further order of this Court. The Receiver is appointed for the purpose of marshalling and liquidating in an orderly manner all of Prospero's assets and satisfying the claims of creditors therefrom in the order of priority as determined by this Court.

2. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the general partner, officers, directors, managers, investment advisors and other agents of Prospero under applicable state and federal law and by the Agreement of Limited Partnership, in addition to all powers and authority of a receiver at equity, and all powers and authority conferred upon

C 04 -

[Proposed] Order Granting Receivership/Injunctive Relief

1 the Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The general partner,  
2 management company, trustees, directors, officers, employees, managers, investment advisors and  
3 agents of Prospero are hereby dismissed. Such persons shall have no authority with respect to  
4 Prospero's operations or assets, except to the extent as may hereafter be expressly granted by the  
5 Receiver. The Receiver shall assume and control the operation of Prospero and shall pursue and  
6 preserve all of its claims. Jurisdiction is conferred on this Court by virtue of the Small Business  
7 Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311 and 316, 15  
8 U.S.C. §§ 687(d), 687c and 687h; and 28 U.S.C. § 1345.

9 3. The past and/or present general partner, management company, officers, directors, managers,  
10 investment advisors, agents, trustees, attorneys, accountants, and employees of Prospero, as well as all  
11 those acting in their place, are hereby ordered and directed to turn over to the Receiver forthwith all  
12 books, records, documents, accounts and all other instruments and papers of and relating to Prospero  
13 and its assets, whether real or personal, including but not limited to: (i) all definitive agreements to which  
14 the Partnership is a party or is otherwise bound, including, the Partnership Agreement and any  
15 amendments thereto, (ii) a list of all limited partners including contact information, (iii) all records related  
16 to portfolio company investments, (iv) the financial books and records of Prospero, and (v) copies of  
17 the financial books and records of the general partner and management company and all other assets  
18 and property of Prospero, whether real or personal. The former General Partner, and the management  
19 company, shall furnish a written statement within fifteen (15) days after the entry of this Order, listing the  
20 identity, location and estimated value of all assets of Prospero as well as the names, addresses and  
21 amounts of claims of all known creditors of Prospero. Within thirty (30) days following the entry of this  
22 Order, such person shall also furnish a written report describing all assets. All persons having control,  
23 custody or possession of any assets or property of Prospero are hereby directed to turn such assets  
24 and property over to the Receiver.

25 4. The Receiver shall promptly give notice of its appointment to all known partners,  
26 officers, directors, agents, employees, shareholders, creditors and debtors of Prospero, as the Receiver  
27 deems necessary or advisable to effectuate the operation of the receivership. All persons and entities  
28

C 04 -

[Proposed] Order Granting Receivership/Injunctive Relief

1 owing any obligation or debt to Prospero, until further ordered by this Court, shall pay all such  
2 obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall  
3 have the same force and effect as if Prospero had received such payments.

4 5. The Receiver is hereby authorized to open such Receiver's accounts at banking or other  
5 financial institutions to extend credit on behalf of Prospero, to utilize SBA personnel, and to employ  
6 such other personnel as it may deem necessary to effectuate the operation of the receivership including,  
7 but not limited to, attorneys, accountants, and appraisers, and is further authorized to expend  
8 receivership funds to compensate such personnel in such amounts and upon such terms as the Receiver  
9 shall deem reasonable in light of the usual fees and billing practices and procedures of such personnel.  
10 The Receiver is not required to obtain Court approval prior to the disbursement of receivership funds  
11 for payments to personnel employed by the Receiver or for expenses that the Receiver deems  
12 advantageous to the orderly administration and operation of the receivership. In addition, the Receiver  
13 is authorized to reimburse the SBA for travel expenses incurred by SBA personnel in the establishment  
14 and administration of the receivership. The Receiver may, without further order of this Court, transfer,  
15 compromise, or otherwise dispose of any asset (including without limitation any claim), other than real  
16 estate.

17 6. Prospero's past and/or present partners, officers, directors, agents, accountants, managers,  
18 shareholders, employees, debtors and creditors and other appropriate persons (including without  
19 limitation, Prospero's portfolio of small business concerns and financial institutions doing business with  
20 Prospero and/or Prospero's portfolio of small business concerns) shall answer under oath to the  
21 Receiver all questions which the Receiver may put to them in compliance with the Federal Rules of Civil  
22 Procedure, and pursuant thereto shall produce any documents as required by the Receiver regarding  
23 the business of Prospero, or any other matter relevant to the operation or administration of the  
24 receivership or the collection of funds due to Prospero. In the event that the Receiver deems it  
25 necessary to require the appearance of the aforementioned persons, the production of documents,  
26 information, or any other discovery concerning the assets, property or business operations of Prospero,  
27 or any other matter relevant to the operation or administration of the Receivership or the collection of  
28

C 04 -

[Proposed] Order Granting Receivership/Injunctive Relief

1 funds due to Prospero, the Receiver shall make its discovery request(s) in compliance with the Federal  
2 Rules of Civil Procedure.

3 7. The parties, or any prospective parties, to any and all civil legal proceedings of any nature,  
4 excluding the instant proceeding, but including without limitation bankruptcy proceedings, arbitration  
5 proceedings, foreclosure actions, default proceedings, or other actions of any nature involving Prospero  
6 or any assets of Prospero, including subsidiaries, partnerships and other business combinations of  
7 Prospero, wherever located, or involving Prospero, the Receiver, or any of Prospero's past or present  
8 officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any  
9 action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant,  
10 third-party plaintiff, third-party defendant, or otherwise, are enjoined from commencing or continuing  
11 any such legal proceeding, or from taking any action, in connection with any such proceeding or any  
12 such asset. All civil legal proceedings of any nature, excluding the instant proceeding, but including  
13 without limitation bankruptcy proceedings, arbitration proceedings, foreclosure actions, default  
14 proceedings, or other action of any nature involving Prospero or any assets of Prospero, including  
15 subsidiaries, partnerships and other business combinations of Prospero, wherever located, and  
16 excluding the instant proceeding, or involving Prospero, the Receiver, or any of Prospero's past or  
17 present officers, directors, managers, agents, or general or limited partners sued for, or in connection  
18 with, any action taken by them while acting in such capacity of any nature, whether as plaintiff,  
19 defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their entirety, and all  
20 Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further  
21 Order of this Court.

22 8. Further, as to a cause of action accrued or accruing in favor of Prospero against a third person  
23 or party, any applicable statute of limitation is tolled during the period in which this injunction against the  
24 commencement of legal proceedings is in effect as to that cause of action. 9. Prospero and its past  
25 and/or present directors, officers, managers, general or limited partners, agents, investment advisors,  
26 employees and other persons acting in concert or participating therewith be, and they hereby are,  
27 enjoined from either directly or indirectly taking any actions or causing any such action to be taken  
28

1 which would dissipate the assets and/or property of Prospero to the detriment of the Receiver  
2 appointed in this cause, including but not limited to destruction of corporate records, or which would  
3 violate the Small Business Investment Act of 1958, as amended, 15 U.S.C. 661 et. seq, or the  
4 regulations promulgated thereunder ("Regulations"), 13 C.F.R. Part 107.

5 10. The Receiver is authorized to borrow on behalf of Prospero, from the SBA, up to \$500,000  
6 and is authorized to cause Prospero to issue Receiver's Certificates of Indebtedness in the principal  
7 amounts of the sums borrowed, which certificates will bear interest at or about 10 percent per annum  
8 and will have a maturity date no later than 18 months after the date of issue. Said Receiver's Certificates  
9 of Indebtedness shall be deemed to be administrative expenses of the Receivership.

10 12. SBA shall be appointed Receiver of Prospero based on Prospero's consent.

13 Dated: 10-18-04

/s/ Sandra Brown Armstrong  
UNITED STATES DISTRICT JUDGE

28 C 04 -  
[Proposed] Order Granting Receivership/Injunctive Relief